

APPENDIX A

Relevant Statutes and Rules (Pertinent Portions)

1. McCarran-Ferguson Act, 59 Stat. 33-34, 15 U.S.C.

§ 1011-15:

§ 1. Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

§ 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided*, that after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

§ 3. (a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, and the Act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

§ 4. Nothing contained in this chapter shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

2. Sec. 10(b), Securities Exchange Act of 1934, 48 Stat. 891, 15 U.S.C. § 78:

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

3. Rule 10b-5 of the Securities and Exchange Comm., 17 C.F.R. 240.10b-5:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) to employ any device, scheme, or artifice to defraud,

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or

deceit upon any person, in connection with the purchase or sale of any security.

4. Subsection C of the Securities Acts Amendments of 1964 amends Section 12 of the Securities Exchange Act of 1934 to require registration of equity securities of companies of a substantial sort which are traded over the counter. Its preface and subsection 2(G) follow, 78 Stat. 565, 567-68, 15 U.S.C. § 78l (2)(G):

"(2) The provisions of this subsection shall not apply in respect of—

"(G) any security issued by an insurance company if all of the following conditions are met:

"(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

"(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorization in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

"(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 16 of this title."

5. Relevant Arizona statutes:

(a) *Merger* (as it existed in 1965; irrelevant subsequent amendment), A.R.S. § 20-731

§ 20-731.

A. A domestic stock insurer of any kind may merge or consolidate with another domestic or foreign stock insurer by complying with the provisions of general law governing the merger or consolidation of stock corporations formed for profit, but subject to subsection B of this section.

B. No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with and approved in writing by the director in insurance. The director shall give his approval within a reasonable time after filing unless he finds the plan or agreement:

1. Is contrary to law.
2. Inequitable to the stockholders of any domestic insurer involved.
3. Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

C. If the director does not approve the plan or agreement he shall so notify the insurer in writing specifying his reasons therefor.

(b) *Fraud*, A.R.S. § 20-441, 443(3), 444

§ 20-441.

Among the purposes of this article is the regulation of trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945, 59 Stat. 33, by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

§ 20-443.

No person shall make, issue or circulate, or cause to be made, issued or circulated, any estimate, illustration, circular or statement:

3. Making any misleading representation or any misrepresentation as to the financial condition of any insurer or as to the legal reserve system upon which any life insurer operates.

§ 20-444.

A. No person shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

B. No person that is not an insurer shall assume or use any name which deceptively infers or suggests that it is an insurer.

(c) Proxy regulations, A.R.S. § 20-143(B)

B. The director shall make regulations concerning proxies, consents, or authorizations in respect of securities issued by domestic stock insurance companies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g) (2) (G) (ii) of the securities exchange act of 1934 as amended, and as may be amended. Such regulation shall not apply to any such company having a class of equity securities which are registered or are required to be registered pursuant to

section 12 of the securities exchange act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules and regulations prescribed by the securities and exchange commission pursuant to section 14 of the securities exchange act of 1934 as amended, or as may be amended.

(d) *Insider trading*, A.R.S. § 20-726.01 is too extensive to reproduce, and is in any case relevant only in showing that Arizona did exercise the option given it in the 1964 amendment to the Securities Exchange Act of 1934.

APPENDIX B **LAWS OF THE FIFTY STATES** **RELATING TO** **INSURANCE COMPANY MERGERS**

Laws of States Which Require Insurance Department to Consider

Investor Interest on Mergers (Col. 2) and

Which also have Fraud Control Provisions (Col. 3)

State Name	Statute Number	Statute Number
Alaska	§ 21-69.590	§ 21-38.010, et seq.
Arizona	§ 20-731	§§ 20-441, 443(3), 444
Arkansas	§ 66-4245	§ 66-3005-3101
California	Cal. Ins. Code	Title 10
	§ 839	§ 2602.06 Cal.
		Admin. Code
Connecticut	§ 38-42	§ 38-56
Florida	§ 628.451	§ 626.0600
Idaho	§ 41-2856	§ 41-1301, et seq.
Montana	§ 40-4745	§ 40-3501, et seq.
Nevada	§ 682.320	§ 686.390, et seq.
Oklahoma	§ 36-2131	§ 36-1201, et seq.
Oregon	§ 732.540	§ 746.110
West Virginia	§ 33-5-25	§ 33-11-3
Wyoming	§ 26.1-510	§ 26.1-243, et seq.

**The Following States have no Specific
Provisions for the Approval of
Mergers by Insurance Departments**

Colorado
Delaware (except for mutual companies)
Maine (except for mutual companies)
Mississippi
New Hampshire
New Mexico
Rhode Island
South Carolina (except for mutual companies)
Tennessee (except fraternal societies)

**The Following States Require the Approval of
the Insurance Department or Superintendent for
Mergers, but Do Not Provide for
Specific Consideration of the
Rights of Stockholders**

State Name	Citation
Alabama	Title 10, § 94
Georgia	§ 56-1534
Hawaii	§ 181-651
Illinois	Title 73, § 774
Indiana	§ 39-3903
Iowa	Chap. 521
Kansas	§ 40-309
Kentucky	§ 304.951
Louisiana	§ 22-731
Maryland	Art. 48A, § 271
Massachusetts	Chap. 175, § 19A
Michigan	§ 500.7604
Minnesota	§ 60A.16(2)(1)(c)
Missouri	§ 376.520
Nebraska	§ 44-224.04
New Jersey	§ 152
New York	Art. 15, § 486
North Carolina	§ 58-155.1
North Dakota	§ 26-20-04
Ohio	§ 3907.11
Pennsylvania	T. 40, § 456
South Dakota	§ 31-16-38
Texas	§ 21.25
Utah	§ 31-28-1
Virginia	§ 38.1-81
Washington	§ 48.31.010
Wisconsin	§ 201.30

APPENDIX C

Excerpt from House Report
(Interstate and Foreign Commerce Committee)
No. 1418, May 19, 1964
[To accompany H.R. 6793]

(b) **Stock insurance companies.**—The bill, as introduced, would have covered stock insurance companies meeting the statutory standards. The committee amendment (to sec. 3(c) of the bill) exempts such a company from the jurisdiction of the Securities and Exchange Commission, but only if the company is regulated under State law or the State insurance commissions in all three of the following respects:

(1) Such insurance company is required to and does file an annual statement with the commissioner of insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer, or agency substantially conforms to that so prescribed.

(2) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

(3) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 16 of the Securities Exchange Act of 1934.

This committee amendment was adopted following testimony by a number of State insurance commissioners and representatives of stock insurance companies who

unanimously opposed the subjecting of these insurance companies to the jurisdiction of the Securities and Exchange Commission in addition to the jurisdictions of the various State Commissioners. Further, these witnesses opposed departure by the bill from the doctrine embodied in the McCarran Act that the regulation of insurance companies be left to the States. The basic objection advanced by these witnesses went not to the requirements for the protection of investors for disclosure but only to the jurisdictional question.

The State insurance commissioners through their organization, the National Association of Insurance Commissioners, testified that they recognized some validity to the contention in the commission's special study report that their procedures were primarily directed to matters concerning the protection of policyholders and to the need for some improvement in these procedures insofar as they relate to the protection of investors in the stock of these companies.

The thrust of the testimony by these representatives of the State insurance commissioners was that they be given an opportunity to demonstrate their ability effectively to protect the investors as well as the policyholders. The committee amendment gives these State commissioners this opportunity to do so.

The insurance regulatory authorities of all of the 50 States and the District of Columbia are members of this voluntary association, the National Association of Insurance Commissioners (NAIC), one of the major purposes of which is to achieve a substantial degree of uniformity in the regulation of the insurance business by the various States. NAIC has adopted a uniform annual reporting form, known as the convention blank (or convention

form annual statement), which, in turn, has been adopted in every State as the required annual report form for insurance companies. An NAIC committee, under the chairmanship of Mr. Stafford Grady, insurance commissioner for California, has recently developed also a "stockholders' information supplement" which will become an integral part of the basic form for 1964 and later years. The commissioners of each of the 50 States and the District of Columbia have advised the committee by letters that they would require insurance companies within their respective jurisdictions to file and comply with the supplement and any future revisions thereof as they are adopted by the association.

The purpose of this supplement (which is essentially a questionnaire) is to elicit whether the company's stockholders have been furnished information substantially equivalent to that which the Commission would require under its section 13 (periodic reporting) and section 14 (proxy) rules (although there is some difference in the financial information to be supplied, particularly reconciliation of income and surplus items). The committee amendment accordingly provides that the insurance companies may be exempt from the jurisdiction of the Commission provided that they are subject to State regulation meeting the standards prescribed by the National Association of Insurance Commissioners as to sections 13 and 14.

In addition, NAIC has undertaken a program to bring about enactment of a "model insider trading statute" in each of the 50 States and the District of Columbia which would afford investors protections comparable to those provided in section 16 of the Exchange Act. New York has already enacted the legislation and action is expected

in other States within the near future. The committee amendment would give the States 2 years to pass similar legislation, and provides that the insurance companies would be exempt from the jurisdiction of the Commission if the States have such statutes comparable to section 16.